

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In re Matter of)	
)	
Ameer Flippin)	WT Docket No. 05-149
)	Report No. AUC-58
Petition to Deny Filed Against All Long Form)	File No. 0002069651
Applications Filed in Auction #58)	

To: FCC Secretary for the
Wireless Telecommunications Bureau

COMMENTS OPPOSING INFORMAL COMPLAINT

Nsighttel Wireless, LLC (Nsighttel), by its attorney, hereby opposes Ameer Flippin's *Ex Parte Motion and Petition to Deny Against All Long-Form Applications of Opposing Entities Which Placed Bids Less Than or Equal to In Value of Bids Placed By Ameer Flippin, an Individual, In Auction No. 58 (Informal Complaint)* dated as of March 14, 2005. In opposition thereto, the following is respectfully submitted:

1) The *Informal Complaint* is rife with procedural and substantive defects and appears to have been filed merely to obstruct processing of the currently pending applications. No attempt is made here to criticize each of the defects relating to Mr. Flippin's *Informal Complaint*. In reviewing this matter the Commission should consider that Mr. Flippin is currently under court order restricting his ability to file papers in a civil proceeding after having been determined to have made an appeal which "was not taken in good faith" and which denied Mr. Flippin's request to proceed *in forma pauperis*. *Flippin v. State of Tennessee*, No. 04-2021-D/V, *Order*, issued January 26, 2005,

Western District of Tennessee, copy attached. In other case the U.S. District Court for the Western District of Tennessee, ordered the court clerk not to accept any more papers from Mr. Flippin in that case. *See Flippin v. Ice Cream Man, Inc.*, No. 03-2828, entered December 27, 2004, copy attached.

2) The Commission's February 18, 2005, *Public Notice*, DA 05-459, at 7, Section J, provides that "pursuant to 47 C.F.R. § 1.2108(b), interested parties will have **ten (10) days** to file petitions to deny after the Commission releases a public notice announcing the long-form (FCC Form 601) applications that are acceptable for filing." (Emphasis in original). That public notice was not issued until March 25, 2005, DA 05-771. Mr. Flippin's March 14, 2005, filing was not filed within the 10 filing period established by the Commission and Mr. Flippin's filing is not properly before the Commission. Moreover, a formal petition to deny must contain statements of fact supported by an affidavit which alleges that grant of the application would not be in the public interest. 47 U.S.C. § 309(d)(1). There is not a single statement in Mr. Flippin's filing which even suggests that grant of any application is not in the public interest and Mr. Flippin's filing does not meet the requirements of a formal petition to deny. At best, Mr. Flippin's filing is an informal complaint.

3) Mr. Flippin's petition is also defective because he is concurrently seeking Auction 58 relief in the U.S. Court of Appeals for the D.C. Circuit, No. 05-1026. A party cannot maintain an appellate case and an administrative case at the same time. *See BellSouth Corp. v. FCC*, 17 F.3d 1487, 1489-90 (D.C. Cir. 1994). The Commission should dismiss Mr. Flippin's informal complaint so as to allow Mr. Flippin to proceed through the Court of Appeals.

4) Mr. Flippin did not seek to enter the auction until January 3, 2005, via a request to postpone the auction to allow him additional time to file an application; his request was made well after the November 30, 2004, time established to file an auction application. *See* January 27, 2005,

letter from Gary D. Michaels, WTB, to Mr. Flippin, DA 05-173, n. 1. Mr. Flippin was untimely regarding participation in Auction No. 58 and he cannot demonstrate a cognizable interest vis-a-vis the pending long form applications. Because Mr. Flippin is not injured by grant of any application, Mr. Flippin lacks standing to protest against the applications. Mr. Flippin's relief, if any is available, must be obtained through appeal of the order contained in the January 27, 2005, letter which denied Mr. Flippin's request for relief. Undersigned counsel has no information indicating that Mr. Flippin timely sought reconsideration of the January 27, 2005, letter order. If Mr. Flippin did not seek relief from the Commission regarding the January 27, 2005, letter order, then the Commission should bar further attempts by Mr. Flippin to make filings in this proceeding.

5) As a final matter, Mr. Flippin's basic complaint seems to be that he was the high bidder for various unspecified licenses in Auction 58, notwithstanding the fact that he was not even an applicant. However, as noted in the court orders attached hereto, and as discussed by the D.C. Circuit in No. 05-1026 where Mr. Flippin is seeking leave to proceed *in forma pauperis*, Mr. Flippin seeks relief from the nominal court docketing fees.¹ The licenses at issue in Auction No. 58 sold for over \$2 billion. Mr. Flippin's request that he be awarded all of those licenses when he cannot make \$150-\$250 docketing fee payments does not appear to have been made in good faith. Moreover, Mr. Flippin cannot demonstrate standing because his ability to obtain a license at auction is merely

¹ D.C. Circuit Case No. 05-1026 concerns Mr. Flippin's request to waive the \$250 court docketing fee. In *Flippin v. Ice Cream Man, Inc.*, No. 03-2828, the U.S. District Court's November 25, 2003 *Order*, at 2, copy attached, discusses that in three recent civil cases Mr. Flippin has filed in that Court requesting waiver of the \$150 civil complaint filing fee Mr. Flippin has refused to provide information requested by the Court necessary to substantiate his "indigent" status. However, for purposes of the FCC auction process and making a ruling on his *Informal Petition*, the Commission can accept at face value Mr. Flippin's indigent status admissions. It is noted that the U.S. District Court has become frustrated with Mr. Flippin's failure to comply with the Court's requests for information and issued its denial without permitting Mr. Flippin an opportunity to provide additional information.


illusory given his self-proclaimed lack of funding. *Ranger Cellular and Miller Communications, Inc., Appellants v. Federal Communications Commission*, 348 F.3d 1044, 1050 (D.C. Cir. 2003), *rehearing denied*, January 28, 2004, *cert. denied*, 124 S. Ct. 2823 (2004) (standing not accorded if potential success if decision were favorable is "illusory"). This licensing proceeding is not the proper place for Mr. Flippin to air whatever grievances he might have against the government and the Commission should rule definitively and promptly to protect the auction participants from further delay.

WHEREFORE, in view of the information presented herein, it is respectfully submitted that the *Informal Complaint* be dismissed.

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April 11, 2005

Respectfully submitted,
NSIGHTTEL WIRELESS, LLC


Timothy E. Welch
Its Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *g* D.C.
05 JAN 26 PM 4:15
ROBERT R. DI TROLIO
CLERK, U.S. DIST. CT.
W.D. OF TN, MEMPHIS

AMEER FLIPPIN,

Plaintiff,

vs.

No. 04-2021-D/V

STATE OF TENNESSEE, et al.,

Defendants.

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ORDER STRIKING DOCUMENT FILED ON NOVEMBER 18, 2004
AND
ORDER REAFFIRMING RESTRICTIONS ON FILING PRIVILEGES

On February 12, 2004, the Court dismissed this action without prejudice pursuant to Fed. R. Civ. P. 41(b) based upon plaintiff's failure to prosecute. The Court entered its judgment on February 18, 2004. On February 20, 2004, the plaintiff filed a notice of appeal and a motion to proceed in forma pauperis on appeal. On March 3, 2004, the Court reaffirmed the certification that Flippin's appeal was not taken in good faith and that he could not proceed in forma pauperis on appeal and directed him to make any further motion to proceed in forma pauperis on appeal to the Sixth Circuit. On November 9, 2004, the Sixth Circuit Court of Appeals denied Flippin's motion to proceed in forma pauperis on appeal.

On November 18, 2004, Flippin sent an irregular document to the Clerk entitled "Ex-Parte Notice of Appeal to the United States

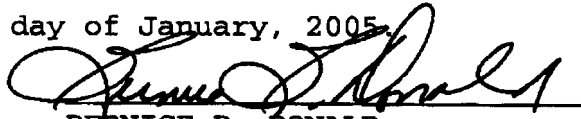
Supreme Court of the Denial of the Interlocutory In Forma Pauperis Status by Pro Se Plaintiff and Appellant. The Clerk filed this document despite the entry of the Court's order on August 3, 2004, which stated in part:

Furthermore, as this case is now on appeal this district court does not have jurisdiction to consider further motions or argument by Flippin until directed to do so by the Sixth Circuit. The Clerk is directed to accept no further documents in this case other than a one page notice of appeal. The Clerk shall accept no further documents for filing in this case without an order from a judge of this district court or the Sixth Circuit Court of Appeals. This case is on appeal before the Sixth Circuit Court of Appeals and Flippin must file further documents related to this case there, not here.

The irregular document does not comply with the Federal Rules of Appellate Procedure nor does it comply with the Supreme Court Rules. To the extent Flippin seeks review of the denial of his motion to proceed in forma pauperis on appeal by the Sixth Circuit, he must seek relief from the Sixth Circuit and file the appropriate motions with that court. This Court cannot review decisions of the Sixth Circuit.

Flippin was fully aware from this Court's previous order that further documents pertaining to his appeal must be filed with the Sixth Circuit and that the district court does not have jurisdiction to consider further motions or argument by Flippin until directed to do so by the Sixth Circuit. Accordingly, there is no jurisdictional or procedural basis for the filing this irregular document with the district court and the notice shall be

stricken from the record. The Court reaffirms the restrictions prohibiting Flippin from filing further documents in this case as set forth in the order of August 3, 2004. The Clerk shall file no further documents in this case until directed to do so by the Sixth Circuit Court of Appeals.

IT IS SO ORDERED this 26 day of January, 2005.

BERNICE B. DONALD
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FILED BY AD D.C.
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION 04 DEC 27 PM 5:29

CLERK, U.S. DIST. CT.
W. D. OF TN MEMPHIS

AMEER FLIPPIN,

Plaintiff,

vs.

ICE CREAM MAN, INC., et al.,

Defendants.

No. 03-2828-Ma/V

ORDER DIRECTING CLERK NOT TO FILE FURTHER DOCUMENTS
IN THIS CLOSED CASE

Plaintiff Ameer Xenos Flippin, a resident of the State of Tennessee, filed a pro se complaint for damages on November 10, 2003, along with a motion seeking leave to proceed in forma pauperis. On November 25, 2003, the Court issued an order denying leave to proceed in forma pauperis and directing the plaintiff to pay the civil filing fee within thirty days. That order further provided that "[f]ailure to comply with this order will result in dismissal of this action, without prejudice, pursuant to Fed. R. Civ. P. 41(b), for failure to prosecute." 11/25/03 Order at 3. Because the plaintiff had not paid the filing fee, or otherwise responded to the Court's order in a timely fashion, the Court issued an order on January 6, 2004 dismissing the action without prejudice, pursuant to Fed. R. Civ. P. 41(b), for failure to prosecute. Judgment was entered on January 15, 2004. Plaintiff's Sixth Circuit appeal was dismissed for want of

prosecution due to his failure to pay the appellate filing fee. Flippin v. Ice Cream Man, Inc., No. 04-5370 (6th Cir. Oct. 5, 2004).

On November 18, 2004, the plaintiff filed a series of documents in this closed case. These documents, which appear to be directed to the United States Supreme Court and are not properly filed in this Court, are entitled, respectively: (1) "Ex-Parte Notice of Appeal to the United States Supreme Court of Interlocutory In Forma Pauperis Status Proceedings by Pro Se Plaintiff and Appellant, Ameer Flippin;" (2) "Ex-Parte Motion for In Forma Pauperis Status on Ex-Parte Motion and Petition for Common Law Writ of Certiorari to a Supreme Court Justice, Individually by Pro Se Plaintiff, Ameer Flippin;" and (3) "(Revised Affidavit as of September 12, 2004): Liberty Bowl Hawker, FedEx Forum Beer Hawk, and University of Memphis Undergraduate Student; Affidavit (Revised) Supporting Motion for In Forma Pauperis Status on Ex-Parte Motion and Petition for Common Law Writ of Certiorari to a Supreme Court Justice, Individually, by Pro Se Plaintiff, Ameer Flippin."

Despite the use of a district court caption, the documents submitted by this plaintiff were plainly intended for the United States Supreme Court, rather than this Court. No useful purpose is served by permitting this plaintiff to file extraneous documents in this closed case. The Clerk is ORDERED not to accept for filing any

additional documents submitted for filing by the plaintiff in this case. Any document received by mail shall be returned without filing.

IT IS SO ORDERED this 21st day of December, 2004.

A handwritten signature in black ink, appearing to read 'JH Mays', written over a horizontal line.

SAMUEL H. MAYS, JR.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *OC* D.C.
03 NOV 25 PM 4:18

ROBERT D. DI TIGLIO
CLERK, U.S. DIST. CT.
MEMPHIS

AMEER FLIPPIN,

Plaintiff,

vs.

ICE CREAM MAN, INC., et al.,

Defendants.

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No. 03-2828-Ma/V

ORDER DENYING LEAVE TO PROCEED IN FORMA PAUPERIS
AND
ORDER DIRECTING PLAINTIFF TO PAY THE CIVIL FILING FEE

Plaintiff Ameer Xenos Flippin, a resident of the State of Tennessee, filed a pro se complaint for damages, along with a motion to proceed in forma pauperis.

Federal law provides that the "clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of \$150" 28 U.S.C. § 1914(a). To ensure access to the courts, however, 28 U.S.C. § 1915(a) permits an indigent plaintiff to avoid payment of filing fees by filing an in forma pauperis affidavit. Under that section, the Court must conduct a satisfactory inquiry into the plaintiff's ability to pay the filing fee and prosecute the lawsuit. A plaintiff seeking in forma pauperis standing must respond fully to the questions on the Court's in forma pauperis form and execute the

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affidavit in compliance with the certification requirements contained in 28 U.S.C. § 1746. See, e.g., Bonds v. Cox, 20 F.3d 697, 702 (6th Cir. 1994).

Plaintiff's motion to proceed in forma pauperis does not adequately document monthly income, assets, and financial obligations. The information provided by the plaintiff is insufficient to permit the Court to conclude that he is indigent and unable to pay the filing fee. This is the third civil action filed by this plaintiff in this district and, in response to orders issued in those other actions, this plaintiff has refused to supplement his in forma pauperis affidavit with sufficient information to permit the Court to conclude that the plaintiff is unable to pay the filing fee or to give security therefor.¹ Under these circumstances, no useful purpose would be served by directing this plaintiff, once again, to file a properly supported application to proceed in forma pauperis. The motion to proceed in forma pauperis is DENIED.

Accordingly, the plaintiff is ORDERED, within thirty (30) days of the date of entry of this order, to pay the \$150 civil

¹ See Flippin v. Coburn, No. 03-2492-Ma/P (W.D. Tenn. filed July 11, 2003); Flippin v. Massey, No. 03-2031-D/A (W.D. Tenn. filed Jan. 16, 2003). Each of these cases is on interlocutory appeal to the Sixth Circuit concerning the denial of in forma pauperis status.

filing fee. Failure to comply with this order will result in dismissal of this action, without prejudice, pursuant to Fed. R. Civ. P. 41(b), for failure to prosecute.

IT IS SO ORDERED this 25th day of November, 2003.

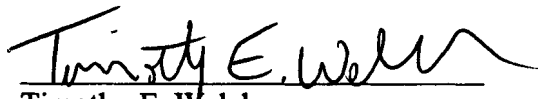


SAMUEL H. MAYS, JR.
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I have this 11th day of April 2005 served a copy of the foregoing *Comments Opposing Informal Complaint* by First Class United States Mail, postage prepaid, upon the following:

Ameer Flippin
2053 Wilson Road
Memphis, TN 38116


Timothy E. Welch

cc: erin.mcgrath@fcc.gov
michael.connelly@fcc.gov
fcc@bcpiweb.com